IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Eshaq Vs. State of Rajasthan
(D.B. CRIMINAL JAIL APPEAL NO.570/2007)

2. Ismail Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.271/2003)

D. B. Criminal Appeals under Sec.374(2) Cr.P.C. against the judgment dated 18-11-2002 in Sessions Case No.130/2001 passed by Sh. Govind Ram Gupta, RHJS, Additional Sessions Judge (Fast Track) No.1, Kota.

Date of Judgment: March 19, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. A.K.Gupta, for the appellant Ismail.
Mr. Vaibhav Gehlot, Amicus Curiae, for the appellant Eshaq.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Eshaq and Ismail, the appellants herein, along with five other co-accused, were placed on trial in Sessions Case No.130/2001, before learned Additional Sessions Judge (Fast Track) No.1, Kota, who convicted and sentenced them as under:-

Eshaq and Ismail:
U/s.302 IPC:
Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer imprisonment for one year.

U/s.148 IPC:
Each to suffer imprisonment for one year.

The substantive sentences were ordered to run concurrently.

2. The allegations against the two appellants in the FIR (Ex.P-9) lodged on August 27, 2000 by informant Babu Lal (Pw.5) were that they came armed with swords and inflicted sword blows on the head, abdomen and neck of Prabhu (since deceased). The police after investigation filed charge sheet and in due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.1 Kota. Charges under sections 148, 302, 324, 323 and 324/149 IPC were framed. The appellants denied the charge and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under section 313 Cr.P.C., the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have given our anxious consideration to the submissions advanced before us and carefully scrutinised the record.

4. Death of deceased Prabhu Lal was indisputably homicidal in nature. As per postmortem report (Ex.P-1) following antemortem injuries were found on the dead body:-

1. Chop wound over occipital region 17 x 4cm x brain tissue deep transversely placed.
2. Chop wound on occipital region 18 x 4cm x brain tissue deep transversely placed.
3. Chop wound over occipital region 8 x 4cm x brain tissue deep transversely placed above three injuries are mixed with each others so beneath is 4cm is common.
4. Incised wound over parieto occipital region 6 x 1cm x bone clean cut beneath th wound in midline.
5. Incised wound over parito occipital region 4 x 1cm x 8cm long in midline.
6. Incised wound over chin 3 x 1 x muscle deep on left side

7. Abradial contused swelling over forehead on left side 6 x 9cm
8. Abrasion over face on left side 4 x 4cm
9. Stab wound over Rt. hypochondria 6 x 1cm x cavity deep intestine loop coming out from wound
10. Stab wound over Rt. lateral aspect of abdomen 3 x 1cm x cavity deep.
11. Incised wound over chest on Rt. side on back 4 x 1cm x muscle deep.
12. Two incised wounds over Rt. shoulder 6 x 0.5, 4 x 0.2cm x subcutaneous deep.
13. Five incised wounds over left shoulder 14 x 5cm, 12 x 0.5cm, 13 x 0.2cm, 6 x 0.2cm, 6 x 0.2cm subcutaneous deep.
14. Incised wound over Rt. forearm 6 x 0.2cm upper 1/3.

In the opinion of Dr. P.K.tiwari (Pw.1) the cause of death was coma as a result of head injury associated with others external and internal injuries.

5. Super structure of prosecution case is founded on the testimony of informant Babu Lal (Pw.5), Dinesh (Pw.2), Arjun (Pw.3) and Hrish (Pw.4) who were the eye witnesses of the incident. Babu Lal (Pw.5) in his deposition stated that on the date of incident around 5PM Firoz, Ismail and 5-7 others had a quarrel. Thereafter Dinesh Rajput was slapped by Firoz and Prabhu (deceased) was called. When Prabhu arrived Ismail, Bhuriya, Eshaq, Firoz, Mohd.Hussain, Pappan and 6-7 others surrounded him. Eshaq, Bhuriya and Ismail were armed with swords and others were having lathis and Gandasas. They respectively gave sword blows on the person of Prabhu. When Babu intervened he was also given beating. Testimony of Babu finds corroboration from the statements of Dinesh (Pw.2), Arjun (Pw.3) and Hrish (Pw.4).

6. Having carefully tested the testimony of prosecution witnesses

from the point of view of trustworthiness, we do not see any material discrepancy in it. Normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there, however honest a truthful a witness may be. Material discrepancies are those which are not normal and not expected of a normal person. Courts have to label the category into which a discrepancy may be categorized. While normal discrepancies do not erode the credibility of witness, material discrepancies do.

7. It is well settled that when ocular evidence is cogent, credible and trustworthy, minor variance, if any, is not of any consequence. Their Lordships of Supreme Court in Krishnan Vs. State (2003)7 SCC 56 indicated that witnesses are the eyes and ears of justice. Eye witnesses account would require a careful independent assessment and evaluation for its credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts, the credit of the witnesses, their performance in the witness box; their power of observation etc.

8. From the cross examination of prosecution witnesses nothing infirm could be elicited to caste a doubt on their testimony. We see no ground to discard the testimony of prosecution witnesses.

9. So far the argument in regard to discarding the evidence of related witness is concerned, we find no merit in it. In Ram Lakhan Vs. State of UP (AIR 1996 SC 3429) held that the evidence of close relatives of

deceased is not liable to be rejected on ground that they are interested witnesses. What is necessary is that Court should scrutinize evidence of such witness carefully.

10. In Baitullah Vs. State of UP (AIR 1997 SC 3946) Hon'ble Supreme Court held that evidence of interested witness cannot be discarded merely on ground that he is interested. It is normally expected that witness would not leave out real culprits and rope in innocent persons. In the instant case the prosecution is able to establish the charges under section 302 and 148 IPC against the appellants beyond reasonable doubt and they have been rightly convicted and sentenced by the learned trial court.

11. For these reasons, we find no merit in the instant appeals and the same accordingly stand dismissed. Conviction and sentence of appellants under sections 302 and 148 IPC are maintained.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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